

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7122 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE K.G.BALAKRISHNAN

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BUDDHDEV M VASAVA

Versus

STATE OF GUJARAT

Appearance:

MR KR BRAHMBHATT for Petitioners

Mr.M.A.Bikhari, Asst.Govt.Pleader for Respondent No. 1, 2, 3, 4, 5

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CORAM : MR.JUSTICE K.G.BALAKRISHNAN

Date of decision: 01/05/98

ORAL JUDGEMENT

The petitioners are owners of land bearing survey no.75 of village Amiar, Tal. Sagbara, District Broach. This land was acquired for the purpose of Chudavav Dam. There were about 160 trees on the petitioners' land. The petitioners were told that they would be at liberty to

cut these trees by paying Re.1/- per tree. But the petitioners being members of the Tribal Community, in the then circumstances, could not pay Re.1/- per tree and therefore, they could not cut and remove the trees. At the instance of the Irrigation Department, the trees were cut and the entire trees were sold in public auction and a sum of Rs.1,30,075/- was realised by the respondents. 10% of the said sale price was deducted by the respondents towards supervision charge and 50% of the sale proceeds was directed to be given to the petitioners. Out of that, 2% was deducted towards income-tax and a sum of Rs.49,866.05 was made available to the petitioners. The petitioners contend that they are entitled to get the entire amount and they seek a writ of mandamus directing the respondents to pay the balance amount of Rs.50,886.75.

2. Though the Special Civil Application was filed as early as in 1987, no affidavit-in-reply is seen filed by the respondents.

3. Heard Mr.Brahmbhatt, Counsel for the petitioners and Mr.M.A.Bukhari, Asst. Govt.Pleader for the respondents. It is submitted on behalf of the petitioners that they are entitled to get the entire amount as the trees belonged to the petitioners. The Asst. Govt. Pleader, on the other hand, contended that the petitioners were asked to cut and remove the trees, but they did not carry out that direction and the respondents were constrained to cut and remove the trees and they had to incur heavy expenses and that was why 50% of the auction price was retained by the respondents. Details of the expenses incurred by the Department are not produced. The respondents have also not brought to the notice of the Court any guidelines issued by the Department in such matters. Even if it is assumed that the respondents are entitled to deduct expenses towards cutting and removing trees, they could have deducted reasonable expenses. There were only 160 trees and they were sold by public auction. The bidders themselves would have taken steps to remove the trees from the place. It is difficult to assume that the Department would have spent Rs.50,886/- for cutting and removing the trees, as the averments made in the petition are not denied by the respondents. Admittedly, the trees belonged to the petitioners and naturally, they are entitled to get the sale proceeds received out of the public auction. The respondents had no authority to retain 50% of the sale proceeds. It is true that, if the Department incurred any expenses, it has to be deducted from the sale price. It may be noted that 10% of the

total amount is deducted towards supervision charges. As the respondents failed to produce any document showing the expenses incurred by them, I hold that a sum of Rs.5000/- may be deducted towards such expenses and the remaining amount will have to be paid to the petitioners.

4. In the result, the petition is partly allowed.

The respondents are directed to pay to the petitioners Rs.45,886.75 with simple interest at 12% per annum from 23-4-1987 till realisation of the amount, within 8 weeks from the date of receipt of writ. Rule to that extent is made absolute.
